

UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:)

)
RONALD BRASHER,)
LICENSEE OF PRIVATE LAND)
MOBIL STATIONS WPLQ202,)
KCG967, WPLD495, WPKH771,)
WPK1739, WPK1733, WPK1707,)
WIL990, WPLQ475, WPLY658,)
WPKY903, WPKY901, WPLZ533,)
WPK1762 AND WPDU262,)
DALLAS/FORTH WORTH, TEXAS,)
et al.)

MM Docket No.: 00-156

APR 2 3 14 PM '00
FCC-ONLY RCD

Volume: 8

Pages: 1440 through 1617

Place: Washington, D.C.

Date: March 6, 2001

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Before the
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Washington, D.C. 20554

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et al.)

Room TW-A-363
Federal Communications
Commission
445 Twelfth Street, Southwest
Washington, D.C. 20554

Tuesday,
March 6, 2001

The parties met, pursuant to the notice of the
Judge or Commission, at 9:05 a.m.

BEFORE: HONORABLE ARTHUR I. STEINBERG
Administrative Law Judge

APPEARANCES:

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Estate of O. C. Brasher, Microplex Two-Way Radio:

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I N D E X

VOIR

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
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Brasher, Thelma Diane	1534	1614			

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E X H I B I T S

IDENTIFIED

RECEIVED

REJECTED

RB/PB

8

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P R O C E E D I N G S

(9:05 a.m.)

JUDGE STEINBERG: On the record now. The next witness is Steven Hill?

MR. ROMNEY: That is correct, Your Honor.

JUDGE STEINBERG: Okay.

MR. ROMNEY: With the Court's permission, I will start with Mr. Hill.

JUDGE STEINBERG: Okay. Mr. Hill, could you stand up and raise your right hand, please?

Whereupon,

STEVEN HILL

having been first duly sworn, was called as a witness herein and was examined and testified as follows:

JUDGE STEINBERG: Please be seated.

MR. ROMNEY: Mr. Hill, my name is Mark Romney. I am the attorney for Ronald Brasher, Pat Brasher, and DLB Enterprises.

DIRECT EXAMINATION

BY MR. ROMNEY:

Q Would you please state your name for the record?

A Steven Hill.

Q Let me instruct you, please, sir, that we do not have amplification in the room, and if you would speak as loudly as possible we would appreciate it, so that everybody

1 can hear your answers.

2 A Okay.

3 Q Would you state your address for the record,
4 please?

5 A My personal address?

6 Q No, sir, your business.

7 A It is 2125 North Josey Lane, Suite 102,
8 Carrollton, Texas, 75006.

9 Q And what is your occupation, sir?

10 A I am a Certified Public Accountant.

11 Q And in what states are you registered as a, are
12 you certified as a public accountant?

13 A In Texas.

14 Q And when did you obtain your certification in the
15 state of Texas?

16 A In 1984.

17 Q Would you describe for the Court, please, briefly,
18 your educational background?

19 A I have a Bachelor's Degree in Accounting from the
20 University of Texas at Arlington, which I obtained in 1982.
21 And --

22 Q Do you have any other degrees after that
23 Bachelor's?

24 A No, I don't.

25 Q Would you explain for the Court, briefly, your

1 work history prior to receiving your certification?

2 A After graduation I went to work for what was then
3 Peat, Marwick and Mitchell. I worked there in their audit
4 department for about five years.

5 Subsequent to that, well, I obtained my
6 certification while I was at Peat, Marwick. Then subsequent
7 to that, I worked at a couple of different banks in Dallas,
8 and later I was with Coopers and Lybrand, another accounting
9 firm, for about three years, prior to starting my own
10 practice.

11 Q Are you familiar with DLB Enterprises, sir?

12 A Yes.

13 Q And how is it that you have come to know about DLB
14 Enterprises?

15 A I have been their accountant since 1998, I guess
16 it was.

17 Q Do you remember what month that was in 1998 that
18 you became the accountant for DLB Enterprises?

19 A I don't recall the specific month.

20 Q What kind of work is it that you perform for DLB
21 Enterprises?

22 A On a monthly basis we compile financial statements
23 for them. We, I would call it after-the-fact bookkeeping.
24 They provide source documents to us, and we generate a
25 general ledger balance sheet and an income statement.

1 And, let's see, we prepare all their payroll tax
2 forms, and their federal income tax forms, their state
3 income tax forms.

4 Q Do you also do work for any of the Brashers
5 individually?

6 A Yes. For Ron and Pat, I do.

7 Q And what kind of work is it that you perform for
8 Ron and Pat?

9 A I do their personal tax return.

10 Q And how long have you been doing that, sir?

11 A Nineteen-ninety-eight was the first year.

12 Q And have you done their tax returns in all the
13 years since then?

14 A Yes.

15 Q Do you also do the tax returns for DLB
16 Enterprises?

17 A Yes, I do.

18 Q And have you done them since 1998's tax return on
19 through the present?

20 A Yes.

21 Q Now, would you explain -- there has been some
22 testimony in this case previously about the set-up at DLB
23 Enterprises for the purposes of equipment. Are you familiar
24 generally with that?

25 A Generally, yes.

1 Q Would you explain to the Court how you understand
2 that to have been set up at DLB Enterprises?

3 A As I understand it, well, from what I have seen,
4 DLB Enterprises does not actually own the -- and I am not
5 sure about all the jargon here, but the repeaters of the
6 licenses. They pay rent, DLB Enterprises pays rent to the
7 Brashers personally.

8 The Brashers then, of course that represents
9 income to them, and then they pay the actual rent on the
10 towers.

11 Q When you say they, you are referring to?

12 A Ron and Pat Brasher.

13 Q Is there more than one account set up? That is,
14 more than one bank account that is utilized by DLB
15 Enterprises?

16 A There is more than one bank account, yes.

17 Q Do you know what those are, what different
18 accounts there are?

19 A There is an operating account, and there is a
20 payroll account.

21 Q Is there also a Brasher account versus a DLB
22 account?

23 A There is an account that is styled Brasher, which
24 is not actually a corporate account. It is styled Brasher,
25 does not have the corporate name on it.

1 Q And for what purpose is that account used?

2 A Honestly, I am not sure. We don't really do
3 anything with that account.

4 Q Have there been any major purchases of repeaters
5 or station equipment since the time you have been the
6 accountant, since 1998?

7 A I believe that the -- not by DLB, but Brashers.
8 There were some purchases, just going on memory, there were
9 some purchases in '98, and I don't recall about '99.

10 Q And those purchases in 98 were made by the Brasher
11 account, as opposed to the DLB account?

12 A Yes.

13 Q Now, did you make any material changes in the way
14 the accounting is done at DLB Enterprises since the time you
15 have been the accountant?

16 A No, nothing major.

17 Q So the status that the books are in and have been
18 kept at DLB was established by someone other than yourself?

19 A Yes.

20 Q Do you have personal knowledge as to which
21 accountant set up the bookkeeping the way it is set up?

22 A Not specific -- no, as to that, no.

23 Q Have you ever talked to an individual by the name
24 of James Sumpter?

25 A I have not talked to him. I have heard the name,

1 seen his name on various reports and things.

2 Q Is it your understanding that Mr. Sumpter was the
3 prior accountant that established the accounting system at
4 DLB?

5 A That is my understanding.

6 Q Now, are there any tax advantaging reasons for
7 having the accounts, the equipment purchases and everything,
8 set up at DLB and between Brashers, the way they are?

9 A There certainly can be. That is not an unusual
10 situation. I have seen it with other companies before.
11 Particularly with real estate.

12 When a company wants to acquire a building or
13 something to office their headquarters in, a lot of times
14 either the individual owners will purchase the building, or
15 they will form a separate corporation to purchase the
16 building, and then rent it to the company. That provides
17 one mechanism for taking money from the company, giving it
18 to the individuals without it being considered payroll. And
19 there can be some advantages to that.

20 If there are excess compensation issues, and in
21 the case of real estate, sometimes you can take out rent and
22 it is not considered self-employment income, and it is not
23 subject to self-employment taxes. Whereas if they were
24 taking out, you know, higher salaries in lieu of rent, those
25 would be subject to payroll taxes.

1 Q Specifically with regard to the way the books are
2 set up at DLB Enterprises, would you explain to the Court
3 what tax advantages there may be in that kind of
4 arrangement?

5 A In this situation, the income that the Brashers
6 received from DLB is subject to self-employment tax because,
7 as I understand it, it is more a matter of equipment rental
8 as opposed to real estate. And equipment rental is subject
9 to self-employment tax.

10 In their specific situation, you know, there are
11 not, that I know of, any tremendous tax savings. If there
12 were excess compensation issues, where the company was
13 making so much money that it was not, that it could not pay
14 the owners a, most of the earnings out and be able to deduct
15 those earnings -- I think it is like a million dollars that
16 a company is allowed to pay its owners -- that they would be
17 able to take out rent in addition to their salaries. But
18 that is not the case here, and has not been, as long as I
19 have been involved with it.

20 One reason I, with clients, recommend a situation
21 like that is that it, sometimes it separates an asset from
22 the company, and it enables them to sell the company if that
23 were an issue, and retain that asset. Or if something were
24 to happen to the company, you know, litigation-wise, that
25 asset would be their personally, and they would not stand to

1 lose it.

2 You know, in this particular situation, you know,
3 I don't see that there, I couldn't put a number on any kind
4 of tax savings that is generated for them.

5 Q Now, with regard to the -- is there a certain
6 level of sophistication to the way the accounting system is
7 set up at DLB Enterprises, as you understand it?

8 A Yes. This is a fairly -- it is not real
9 complicated, but it is, I would call it sophisticated in
10 that, you know, the equipment is separate from the company.
11 And there is inter-company, or not inter-company but
12 transactions between the company and the owner. You know,
13 it would take someone that, you know, with some expertise to
14 recommend something like that, I would think.

15 Q Now, you have had occasions to meet, on numerous
16 occasions to meet with Ronald Brasher and discuss financial
17 matters?

18 A I have met with him on occasion, and spoken with
19 him on the phone a number of times, yes.

20 Q You have met with Patricia Brasher on several
21 occasions to discuss financial matters of the company?

22 A Yes, I have.

23 Q There has been testimony in this hearing, sir,
24 that the accounting system was established at DLB
25 Enterprises by the previous accountant, James Sumpter. Are

1 you possessed of any personal information which would lead
2 you to believe otherwise?

3 A No.

4 Q Do you believe that, from your knowledge and the
5 dealings you have had with Mr. and Mrs. Brasher, Ron and Pat
6 Brasher, that they have the financial sophistication to set
7 up the accounting system such as it is now?

8 A I wouldn't think so.

9 Q Did you see the earlier tax returns that were
10 filed on behalf of this, the Brashers by Mr. Sumpter's
11 office?

12 A I saw the 1997 return.

13 Q Did you see any of the previous ones?

14 A No.

15 Q To your knowledge, did those tax returns apply
16 self-employment tax to the rental income that the Brashers
17 received?

18 A Yes.

19 Q They did?

20 A Yes, the '97 return did.

21 MR. ROMNEY: Permission to approach, Your Honor?

22 JUDGE STEINBERG: Yes, sir.

23 MR. ROMNEY: Let me give you that.

24 BY MR. ROMNEY:

25 Q Mr. Hill -- excuse me, let me get back, go to my

1 microphone.

2 Mr. Hill, I have placed before you what has been
3 marked for identification as RB/PB Exhibit Number 8.

4 JUDGE STEINBERG: That has not been marked yet.
5 So let me, do you want me to do that now?

6 MR. ROMNEY: Okay, yes, please.

7 JUDGE STEINBERG: Okay, what we have got is we
8 have got an 89-page document. And I will just use the title
9 that was used when the document was exchanged. It was
10 exchanged as a different number, and we have renumbered it.

11 It is Profit/Loss Statement of Allen, Texas Site
12 to a T-Band Operation by DLB Enterprises, Inc. And it is
13 marked for identification as RB/PB Exhibit 8.

14 (The document referred to was
15 marked for identification as
16 RB/PB Exhibit No. 8.)

17 BY MR. ROMNEY:

18 Q Mr. Hill, you have before you what has been marked
19 for identification now by the Judge as RB/PB Exhibit
20 Number 8?

21 A Yes.

22 Q Would you explain to the Court what that document
23 is?

24 A The first two pages of the document here are a,
25 are documents that I prepared for the Brashers. Basically,

1 it is a compilation of the revenue and expense numbers for
2 the Allen Repeater for the years 1996 through the year 2000.

3 Q Do you recognize the other pages, other than the
4 first two pages?

5 A Yes, I do.

6 Q And what are those?

7 A Those are the detail pages of the resident figures
8 for the Allen Repeater for those same years.

9 MR. ROMNEY: Thank you. I move the admission of
10 Exhibit RB/PB Exhibit Number 8, Your Honor.

11 MS. LANCASTER: Your Honor, I would like to ask a
12 few more specific questions to determine whether I agree or
13 disagree, if I object.

14 JUDGE STEINBERG: Is this voir dire or --

15 MS. LANCASTER: Yes, sir.

16 JUDGE STEINBERG: -- cross-examination?

17 MS. LANCASTER: Voir dire.

18 JUDGE STEINBERG: Okay.

19 VOIR DIRE EXAMINATION

20 BY MS. LANCASTER:

21 Q Mr. Hill, the handwritten pages that are attached
22 to the first two pages, let's go through it. Page one is a
23 cover letter, is that correct?

24 A That was called an accountant's report. Yes.

25 Q Okay. And page two, what would you call page two?

1 A That's the statement of revenues and expenses for
2 the Allen Repeater.

3 Q Okay. The remaining pages of this exhibit are
4 handwritten ledger, they look somewhat like what a layman
5 would consider to be ledger pages. Is that correct?

6 A Yes, it is.

7 Q Did you compile those pages?

8 A No, those pages basically I just added up the
9 numbers that were relevant to the schedule that I was
10 preparing. But the schedule to themselves were actually,
11 the numbers were already there.

12 Q All right. Who gave you these pages?

13 A I received these from Pat Brasher.

14 Q And did she tell you who, where she got these
15 figures?

16 A We didn't specifically talk about it. When she
17 brought them in, she had a big box of files. And she had
18 supposedly gone through these files and compiled the
19 schedules to, you know, basically so that I could prepare
20 the compilation report.

21 Q But you did not see the files.

22 A I saw the files, yes.

23 Q You went through the files? You know that these
24 numbers are all accurate?

25 A I can't testify as to the accuracy of the numbers.

1 I did see the files.

2 Q You saw a box of files, is that what you mean?

3 A Yes.

4 Q Okay. Did you go through the files individually?

5 A No, I didn't.

6 Q So all you know is that Pat Brasher came in and
7 handed you these sheets, and you have gone through and added
8 up the columns. Is that basically what you did?

9 A Yes.

10 MS. LANCASTER: Your Honor, I would object to this
11 exhibit. This is, there is no basis to know whether or not
12 to know it is accurate or not.

13 BY MR. ROMNEY:

14 Q Mr. Hill, did you have an --

15 MR. ROMNEY: May I continue voir dire?

16 JUDGE STEINBERG: Sure.

17 BY MR. ROMNEY:

18 Q Mr. Hill, did you have an opportunity to go
19 through the files, and verify to the testing samples applied
20 by accountants the accuracy of the information contained on
21 these sheets, three through 89?

22 A Ms. Brasher left the files with me in my office
23 during the few days that I put the schedules together. So I
24 did have them.

25 Q Did you actually make some sampling of the

1 information that is contained in pages three through 89, and
2 apply those types of sampling matters that are done
3 customarily by accountants of your training?

4 A Typically, sampling is done in an audit. This was
5 not an audit; this was a compilation. And statistical or
6 sampling, testing of that nature is not required in a
7 compilation. And you know, I can't sit here and say that I,
8 you know, did any type of statistical procedures to verify
9 the accuracy of the numbers.

10 Q Did you perform the compilation procedures that
11 are standard and customary in the accounting profession?

12 A Yes, I did.

13 MS. LANCASTER: Your Honor --

14 JUDGE STEINBERG: Wait. I do not know if Mr.
15 Romney is finished.

16 BY MR. ROMNEY:

17 Q Would you explain to the Court what those
18 compilation procedures are?

19 A Basically, a compilation by an accountant consists
20 of putting in the form of financial statements numbers that
21 are provided by a client or client/management. They, you
22 know, there aren't specific requirements to verify the
23 accuracy of the numbers. It is more a matter of, like I
24 say, putting it in the form of financial statements and
25 doing more of an overall, I hate to use the word review, but

1 making sure that nothing looks outrageously out of line on
2 it.

3 In other words, there were, in this specific
4 instance, you know, I looked at an overall-type deal where
5 the revenues and expenses went up each year. The, you know,
6 had they been zero in one year, I would have asked about
7 that. Had they been three times what they were in the prior
8 year, or three times what they were in the succeeding year,
9 I would have asked about that.

10 So it's kind of an overall reasonableness-type
11 test that you do.

12 Q Let me refer you to the first page of your, of
13 your, what you call the accountant report.

14 A Mm-hmm.

15 Q Did you compile this accompanying statement of
16 revenues and expenses in accordance with the statements on
17 standards for accounting and review services, issued by the
18 American Institute of Certified Public Accountants?

19 A Yes, I did.

20 Q And is the compilation limited to presenting, in
21 the form of financial statements, information that is the
22 representation of management?

23 A Yes, it is.

24 Q You did not audit them?

25 A No, I didn't.

1 Q You did not review the accompanying statement of
2 revenue and expenses, and you do not express any opinions on
3 it, do you?

4 A No, I do not.

5 MR. ROMNEY: Your Honor, I move the admission of
6 this document for what it purports to be, which is an
7 accountant's compilation.

8 MS. LANCASTER: Your Honor, this is -- I object.
9 I mean, this document is nothing. He added up some columns,
10 that is all he did.

11 He cannot attest to the veracity of any of the
12 figures that he added up. He did not -- if they had wanted
13 to get that information in, they had an opportunity to do it
14 with the prior witness, and they did not do it.

15 I do not believe that there is a valid reason for
16 entering this document. It does not mean anything. It is
17 basically hearsay, because he does not have any personal
18 knowledge of the numbers.

19 MR. ROMNEY: Your Honor, if I could, in response.

20 JUDGE STEINBERG: Okay. Then you get the last
21 word.

22 MR. ROMNEY: Documents, a witness like this is
23 entitled to rely on hearsay, number one.

24 MS. LANCASTER: Your Honor, I am going to object
25 to him testifying, however.

1 JUDGE STEINBERG: Who is testifying?

2 MS. LANCASTER: Mr. Romney.

3 JUDGE STEINBERG: He is not testifying. That is a
4 legal argument.

5 MR. ROMNEY: An accountant is entitled to rely
6 upon hearsay in expressing the compilation that he is
7 permitted to do. He has testified that he has performed
8 this in accordance with the principles and procedures in the
9 AICPA. The document is what it purports to be, and nothing
10 more than what it purports to be. And any objections go to
11 the weight to be given to the document, and not to its
12 admissibility.

13 JUDGE STEINBERG: I will receive the exhibit, and
14 then you can argue weight, and findings, and reply findings.
15 And I can --

16 MS. LANCASTER: But Your Honor, may I make one
17 comment? The document on its face says it is prepared to
18 present the cash flow. So it does, it is, they are
19 presenting it for the truth of the figures in it. And that
20 is not what he just said.

21 He said it is presented strictly as a compilation.
22 And yet the opening page indicates it is prepared to present
23 the cash flow.

24 JUDGE STEINBERG: Well, you can ask whatever
25 questions you want to ask on that on cross-examination. And

1 then it will go to the weight.

2 MR. ROMNEY: Thank you.

3 (The document referred to,
4 having been previously marked
5 for identification as
6 RB/PB Exhibit No. 8,
7 was received in evidence.)

8 DIRECT EXAMINATION

9 BY MR. ROMNEY:

10 Q Mr. Hill, would you please explain to the Court
11 what is contained on the second page of your compilation
12 report, Exhibit RB/PB Number 8?

13 A Yes. On the second page it reflects the revenues,
14 the expenses, and the net profit of the Allen Repeater for
15 the years 1996 through 2000, and then a total for those
16 years.

17 Q And what is the total that you find there?

18 A Total revenue for those five years was \$53,788.
19 Total expenses were \$155,847, with a net loss of \$102,059.

20 Q And in any of those years -- '96, '97, '98, '99,
21 2000 -- was there a net profit on the Allen Repeaters?

22 A No, there was not.

23 Q Now, does this document purport to be a complete
24 representation of the company's revenues and expenses?

25 A No, it doesn't.

1 MR. ROMNEY: Pass the witness, Your Honor.

2 JUDGE STEINBERG: Ms. Lancaster.

3 CROSS-EXAMINATION

4 BY MS. LANCASTER:

5 Q Mr. Hill, what is included as an expense in this
6 figure? What is an expense?

7 A Basically, the expenses are numbers that I was
8 provided by Pat Brasher, which I understand to be the rent
9 for the Allen Repeater.

10 Q So Pat Brasher told you that the only expense that
11 she included was the rent? Did she tell you that
12 specifically?

13 A I don't recall if she specifically said that or
14 not.

15 Q You do not really know what was included for the
16 expenses, do you?

17 A I can't say for certain, no.

18 Q Is that a no?

19 A No.

20 JUDGE STEINBERG: Okay is that a no, no it is not
21 a no?

22 (Laughter.)

23 JUDGE STEINBERG: We have a -- why don't you reask
24 the question?

25 MS. LANCASTER: Okay.

1 BY MS. LANCASTER:

2 Q Do you know what was included as an expense in
3 these figures?

4 A No.

5 Q Do you know what was included as revenue in these
6 figures?

7 A For the revenue, there were supporting schedules
8 that listed the revenue by account for the Allen Repeaters,
9 broken down by month and then by account, with the number
10 of, I guess, rent for each account.

11 Q Okay. Are those schedules attached here?

12 JUDGE STEINBERG: To Exhibit 8?

13 THE WITNESS: Yes, they are.

14 BY MS. LANCASTER:

15 Q Where are they? What page? Can you look on
16 there?

17 A They start with page four.

18 Q Okay, account 1007 I believe is the first entry on
19 the left-hand side, under the word "account" on page four.
20 What does that mean?

21 A That would be an account number.

22 Q And for what account?

23 A Account number 1007.

24 Q You do not know the name that is associated with
25 that account, do you?

1 A No, I don't.

2 Q You do not know what, all the repeaters that
3 account might utilize, do you?

4 A Looking at the schedule, it appears not to utilize
5 the Allen Repeater.

6 Q Okay. And let's look at the next one under that.
7 It says number 2451.

8 Let me go back. You said looking at the schedule
9 it appears they did not utilize the Allen Repeater. The
10 only information you have as to what anybody utilizes or any
11 account utilizes is this piece of paper that was handed to
12 you by Pat Brasher, is that correct?

13 A That's correct.

14 Q You do not have any personal knowledge of who does
15 what, what customer uses what repeaters, do you?

16 A No, I don't.

17 Q And you do not have any personal knowledge as to
18 what account number goes with which customer, do you?

19 A No, I don't.

20 Q Would those be, would you have that information?
21 Would that information be handed to you on a regular basis?

22 A No, it wouldn't.

23 Q So you could not go back through the documentation
24 that had been previously handed to you in the course of
25 business, and pull these numbers up, could you?